



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/911,994

07/24/2001

Joseph H. Berkovitz

101.957.124

5234

23483

7590

10/16/2006

WILMER CUTLER PICKERING HALE AND DORR LLP
60 STATE STREET
BOSTON, MA 02109

EXAMINER

WU, RUTAO

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/911,994	Applicant(s) BERKOVITZ ET AL.	
	Examiner Rob Wu	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 07, 2006 has been entered.

Response to Arguments

2. In response to remarks presented by the applicant filed August 07, 2006, the Examiner does not agree with the applicant that the amended claims 1, 20-26, 31, 34 and 37 make clear that the price modifications referenced in the claims apply to the price to be paid by a customer for items purchased in the customer's order. Claim 1 as recited is directed to modifications to the price to be paid by the customer for the order that are not conditional and based upon conditional rules. The claim does not recite making modifications to the price to be paid by a customer for items in an order, rather the claim makes modification to the complete order as a whole.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-17, 20-34, 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat No. 6,058,373 to Blinn et al.

Referring to claim 1:

A computer system for dynamic pricing of at least one item in a customer's order comprising:

At least one static calculator for making modifications to the price to be paid by the customer for the order that are not conditional; and (col 28: lines 1-6)

At least one dynamic calculator for making modifications to the price to be paid by the customer for the order based upon conditional rules. (col 25: lines 9-12)

Referring to claim 2:

The computer system of claim 1 wherein the at least one static calculator comprises a pre-calculator that determines an initial price. (col 24: lines 50-53)

Referring to claim 3:

The computer system of claim 1 wherein the at least one static calculator comprises a post-processing calculator that adjusts a determined price according to a price generation algorithm. (col 28: lines 1-6; col 29: lines 51-54)

Referring to claim 4:

The computer system of claim 1 wherein the at least one dynamic calculator further comprises a qualifier and a discount calculator. (col 25: lines 3-13)

Referring to claim 5:

The computer system of claim 4 wherein the qualifier applies rules to determine if an item is qualified to receive a discount. (col 25: lines 9-13)

Referring to claim 6:

The computer system of claim 5 wherein the rules comprise a condition that must be satisfied for an item to qualify for the discount. (col 25: lines 8-12)

Referring to claim 7:

The computer system of claim 5 wherein the rules comprise a condition that must be satisfied for an item to qualify for the discount and a target upon which to apply the discount. (col 25: lines 8-12)

Referring to claim 8:

The computer system of claim 5 wherein the discount calculator applies a discount to an item that is determined to be qualified to receive a discount. (col 25: lines 8-12)

Referring to claim 9:

The computer system of claim 1 wherein the static calculators further comprise a pre-calculator that determines an initial price and a post-processing calculator that adjusts a determined price according to a price generation algorithm; and (col 24: lines 50-53, col 28: lines 1-6; col 29: lines 51-54)

The at least one dynamic calculator further comprises a qualifier and a discount calculator. (col 25: lines 8-12)

Referring to claim 10:

The computer system of claim 1 wherein the at least one static calculator and the at least one dynamic calculator make up a pricing engine. (col 24: lines 50-62)

Referring to claim 11:

The computer system of claim 10 further comprising a plurality of pricing engines. (col 24: lines 50-62)

Referring to claim 12:

The computer system of claim 11 wherein at least one of the plurality of pricing engines calculates a price for a particular item. (col 24: lines 50-62)

Referring to claim 13:

The computer system of claim 11 wherein at least one of the plurality of pricing engines calculates a shipping price of a particular item. (col 25: lines 50-51)

Referring to claim 14:

The computer system of claim 11 wherein at least one of the plurality of pricing engines calculates an applicable tax amount for a particular item. (col 28: lines 1-6)

Referring to claim 15:

The computer system of claim 11 wherein at least one of the plurality of pricing engines calculates an amount comprising a price for all items in an order, shipping costs and applicable taxes for the order. (col 29: lines 50-55)

Referring to claim 16:

The computer system of claim 10 wherein the pricing engine is connected to a network for determining prices of items for sale over the network. (col 1: lines 6-9)

Referring to claim 17:

The computer system of claim 16 wherein the network is the Internet. (col 9: lines 2-4)

Referring to claim 20:

A system for dynamic pricing of at least one item in a customer's order comprising:

At least one static calculator for making modifications to the price to be paid by the customer for the order that are not conditional; and (col 28: lines 1-6)

At least one dynamic calculator for making modifications to the price to be paid by the customer for the order based upon conditional rules. (col 25: lines 9-12)

Wherein the dynamic calculator further comprises a qualifier and a discount calculator. (col 25: lines 8-12)

Referring to claim 21:

A system for dynamic pricing of at least one item in a customer's order comprising:

At least one static calculator for making modifications to the price to be paid by the customer for the order that are not conditional; and (col 28: lines 1-6)

At least one dynamic calculator for making modifications to the price to be paid by the customer for the order based upon conditional rules. (col 25: lines 9-12)

Wherein the at least one static calculator comprises at least one pre-calculator that determines an initial price. ((col 24: lines 50-54)

Referring to claim 22:

A system for dynamic pricing of at least one item in a customer's order comprising:

At least one static calculator for making modifications to the price to be paid by the customer for the order that are not conditional; and (col 28: lines 1-6)

At least one dynamic calculator for making modifications to the price to be paid by the customer for the order based upon conditional rules. (col 25: lines 9-12)

Wherein the at least one static calculator comprises at least one post-processing calculator that performs final adjustments to a price based upon a price generation algorithm. (col 28: lines 1-6; col 29: lines 51-54)

Referring to claim 23:

A system for dynamic pricing of at least one item in a customer's order comprising:

At least one static calculator for making modifications to the price to be paid by the customer for the order that are not conditional; and (col 28: lines 1-6)

At least one dynamic calculator for making modifications to the price to be paid by the customer for the order based upon conditional rules. (col 25: lines 9-12)

The computer system of claim 1 wherein the static calculators further comprise a pre-calculator that determines an initial price and a post-processing calculator that

Art Unit: 3628

adjusts a determined price according to a price generation algorithm; and (col 24: lines 50-53, col 28: lines 1-6; col 29: lines 51-54)

The at least one dynamic calculator further comprises a qualifier and a discount calculator. (col 25: lines 8-12)

Referring to claim 24:

A computer system for dynamic pricing of at least one item in a customer's order comprising:

A module for determining an initial price on the at least one item in the order to be paid by the customer; and (col 24: lines 50-53)

At least one dynamic calculator for modifying the initial price on the at least one item in the order to be paid by the customer based upon condition rules. (col 25: lines 8-14)

Referring to claim 25:

A method of performing dynamic pricing on at least one item in a customer's order comprising the steps of:

Determining an initial price on the at least one item in the order; (col 24: lines 50-54)

Performing one or more dynamic price calculations on the at least one item in the order based upon one or more conditional rules, (col 25: lines 9-14)

Wherein these two pricing steps yield a price to be paid by the customer for the at least one item in the order. (col 29: lines 51-54)

Referring to claim 26:

A method of performing dynamic pricing on at least one item in a customer's order comprising the steps of:

Performing one or more static price calculations on the at least one item in the order that are not conditional; and (col 28: lines 1-6)

Performing one or more dynamic price calculations on the at least one item in the order based upon one or more conditional rules, (col 25: lines 9-12)

Wherein these two price calculation steps yield a price to be paid by the customer for the at least one item in the order. (col 29: lines 51-54)

Referring to claim 27:

The method of claim 26 further comprising the step of utilizing elements of a price environment to perform the calculations. (col 25: lines 8-14)

Referring to claim 28:

The method of claim 26 further comprising outputting price information after the calculations are complete. (col 32: lines 51-59)

Referring to claim 29:

The method of claim 28 wherein the price information comprises a price calculation history which further comprises one or more of the rules used to calculate the price. (Fig 4)

Referring to claim 30:

The method of claim 29 wherein the price calculation history may be used to recalculate a price in the future. (Fig 9)

Referring to claim 31:

A method of allowing a user to create rules for dynamic pricing of at least one item in a customer's order comprising the steps of:

Providing at least one static calculator for making modifications to the price to be paid by the customer for the order that are not conditional; (col 28: lines 1-6)

Providing at least one dynamic calculator for making modifications to the price to be paid by the customer for the order based upon conditional rules; and (col 25: lines 9-12)

Providing a user interface that allows a user to input at least one conditional rule. (Fig 11, col 25: lines 1-5)

Referring to claim 32:

The method of claim 31 wherein the rule is input in text format. (Fig 11)

Referring to claim 33:

The method of claim 32 further comprising a step of transforming the rule to an executable format. (col 24: lines 55-62)

Referring to claim 34:

A computer program product, residing on a computer readable medium, for dynamic pricing of at least one item in a customer's order, the computer program product comprising instructions for causing a computer to:

Determine an initial price on the at least one item in the order; and (col 24: lines 50-54)

Perform dynamic price calculations on the at least one item in the order, (col 25: lines 9-12)

Wherein these instructions yield a price to be paid by the customer for the at least one item in the order. (col 29: lines 51-54)

Referring to claim 37:

A computer program product, residing on a computer readable medium, for dynamic pricing of at least one item in a customer's order, the computer program product comprising instructions for causing a computer to:

Perform static price calculations on the at least one item in the order that are not conditional; and (col 28: lines 1-6)

Perform dynamic price calculations on the at least one item in the order based upon conditional rules, (col 25: lines 9-12)

Wherein these instructions yield a price to be paid by customer for the at least one item in the order. (col 29: lines 51-54)

Referring to claim 38:

The computer system of claim 1 wherein the order comprises a single item. (col 24: lines 50-53, Fig 5)

Referring to claim 39:

The computer system of claim 1 wherein the order comprises a plurality of items. (Fig 10)

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3628

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 18, 19, 35, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blinn et al.

Referring to claims 18 and 19:

Blinn et al disclose that the network is the internet (col 9: lines 2-4). Blinn et al does not expressly disclose that the network is a wireless network or a telephone based network. However, it would have been obvious at the time of the invention for Blinn et al to use a wireless or a telephone network because both methods are well known methods of connecting to the internet.

Referring to claims 35 and 36:

Blinn et al does not expressly disclose that the computer readable medium includes a magnetic disk or an optical disk. Blinn et al does disclose having databases and database modules for access in the invention (col 13: lines 23-33) Therefore, it would have been obvious at the time of the invention that Blinn et al would use a magnetic disk or an optical disk to store the databases and modules, because both magnetic disks and optical disks are well known format of storing database data.

Conclusion

7. Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant.

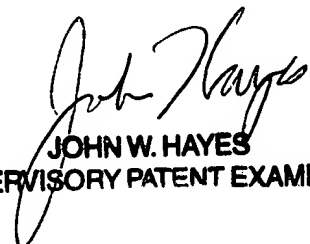
Although the specified citations are representative of the teachings in the art and are

applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Wu whose telephone number is (571)272-3136. The examiner can normally be reached on Mon-Fri 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571)272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER